IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3255 OF 2004

M/s.Mavani Gems & Another .. Petitioners.
V/s.
Union of India & Others .. Respondents.

Mr.B.V. Jhaveri with Mr.A.R. Singh for the petitioners.

Mr.R. Asokan i/b. T.C. Kaushik for the respondents.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 20TH DECEMBER, 2004.

P.C. :

Rule. Returnable forthwith.

2. The advocate for the revenue waives service for the respondents.

3. Rule is treated on board for final hearing at this stage.

4. Having considered the available material and all the aspects, we are of the view that the application made by the petitioners on December 31, 1997 seeking extension under Section 80HHC (2)(a) for realisation of outstanding of export proceeds require reconsideration by the Commissioner of Income Tax,

Bombay-16, Bombay. It is so because it is apparent from the available material on record that the payment have been received, though belatedly, from the concerned parties.

5. The petitioner in the application seeking extension of time under Section 80HHC(2)(a) set out the ground that it was beyond their control like financial difficulties and credit squeeze world over, locking-up of funds in slow moving, inventories, and recessionary trend in business world over, particularly in diamond line. The petitioners stated in the application that they are pursuing the matter and hopefully would receive the balance proceeds.

6. The fact is that the proceeds have been received, though belatedly and that shows that the petitioners did make efforts and it was only beyond the petitioners' control that foreign currency could not be realised in time.

7. We, accordingly, set aside the order dated March 18, 2004 impugned in the present writ petition and direct the Commissioner of Income Tax, Bombay - 16 to reconsider the petitioners' application dated December 31, 1997 seeking extension under Section

80HHC(2)(a) in accordance with law.

8. As regards the challenge to the notice under Section 148 of the Income Tax, liberty to the petitioners to apply to the concerned Assessing Officer for appropriate order in the light of this order.

9. Rule is made absolute in aforesaid terms. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)